



Orrick, Herrington & Sutcliffe LLP
222 Berkeley Street
Suite 2000
Boston, MA 02116
+1 617 880 1800
orrick.com

September 27, 2024

Sent via ECF

Hon. Ona T. Wang
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Sheryl Garko

E sgarko@orrick.com
D +1 617 880 1919
F +1 617 880 1801

RE: *The New York Times Co. v. Microsoft Corp., et al.* No. 1:23-cv-11195
Daily News, LP, et al. v. Microsoft Corp., et al., No. 1:24-cv-3285
Authors Guild et al. v. OpenAI Inc. et al., No. 1:23-cv-8292
Alter et al. v. OpenAI Inc. et al., No. 1:23-cv-10211

Dear Judge Wang:

As directed by the Court during the September 12 status conference, we write on behalf of all parties in the above-entitled actions to provide the Court with an update on the status of the parties' negotiations relating to a coordinated deposition protocol. Defendants seek for such a protocol to be implemented across the Consolidated Newspaper Action¹, the New York Consolidated Class Action², and a related consolidated class action matter pending in the Northern District of California.³ Despite engaging in an extensive meet and confer process, a gap remains between the parties' competing deposition protocol proposals, including on key issues such as the propriety and scope of coordination across the different cases, document production across the cases, overall number of deposition hours allotted and the number and length of depositions of individual and company witnesses. The parties believe they are at an impasse such that the Court's assistance is required, and respectfully request that the Court set the letter briefing schedule below with oral argument to be held at the October 30 Status Conference.

All parties to these cases have been invited to discuss a coordinated deposition protocol. Over the last month the parties have exchanged proposals and counterproposals and three hour-long meet and confers were convened solely on this issue, however the parties have been unable to reach agreement.

To expedite resolution and to ensure that this issue can be heard at the next Status Conference, the parties respectfully request that the Court enter an Order requiring the following schedule:

- The Parties shall exchange final, formal deposition coordination proposals, including all material terms, by Tuesday, October 8, 2024; and

¹ The Consolidated Newspaper Action consist of: *The New York Times Co. v. Microsoft Corp., et al.*, No. 1:23-cv-11195 ("*New York Times*") and *Daily News, LP, et al. v. Microsoft Corp., et al.*, No. 1-24-cv-3285 ("*Daily News*").

² The New York Consolidated Class Action cases consist of: *Authors Guild et al. v. OpenAI Inc. et al.*, (No. 1:23-cv-8292) and *Alter et al. v. OpenAI Inc. et al.*, (No. 1:23-cv-10211).

³ The California Consolidated Class Action cases consist of: *Tremblay, et al. v. OpenAI, Inc., et al.*, (No. 3:23-cv-03223); *Silverman, et al. v. OpenAI, Inc, et al.*, (No. 4:23-cv-03416); *Chabon, et al. v. OpenAI, Inc, et al.*, (No. 4:23-cv-04625). Microsoft is not a party to the California Consolidated Class Action cases.



- The Parties shall submit letter briefs of no more than five (5) pages single-spaced in support of their positions, attaching their written proposals, to the Court by Tuesday, October 15, 2024.

Per the Court's directive in conjunction with and following these submissions, the parties will continue to meet and confer to attempt to narrow these issues, but given the current status of discussions, the parties believe that court intervention is required for a complete resolution on all issues.

We appreciate the Court's attention to these critical issues.

/s/ Sheryl Koval Garko

Sheryl Koval Garko

Counsel for Microsoft Corporation